

House Amendment to
Senate File 471

S-3289

1 Amend Senate File 471, as amended, passed, and reprinted by
2 the Senate, as follows:

3 1. By striking everything after the enacting clause and
4 inserting:

5 <DIVISION I

6 PREREQUISITES FOR ABORTION

7 Section 1. Section 146A.1, Code 2017, is amended by striking
8 the section and inserting in lieu thereof the following:

9 **146A.1 Prerequisites for abortion — ultrasound — licensee**
10 **discipline — interpretation.**

11 1. A physician performing an abortion shall obtain written
12 certification from the pregnant woman of all of the following
13 at least seventy-two hours prior to performing an abortion:

14 a. That the woman has undergone an ultrasound imaging of the
15 unborn child that displays the approximate age of the unborn
16 child.

17 b. That the woman was given the opportunity to see the
18 unborn child by viewing the ultrasound image of the unborn
19 child.

20 c. That the woman was given the option of hearing a
21 description of the unborn child based on the ultrasound image
22 and hearing the heartbeat of the unborn child.

23 d. (1) That the woman has been provided information
24 regarding all of the following, based upon the materials
25 developed by the department of public health pursuant to
26 subparagraph (2):

27 (a) The options relative to a pregnancy, including
28 continuing the pregnancy to term and retaining parental rights
29 following the child's birth, continuing the pregnancy to
30 term and placing the child for adoption, and terminating the
31 pregnancy.

32 (b) The indicators, contra-indicators, and risk factors
33 including any physical, psychological, or situational factors
34 related to the abortion in light of the woman's medical history
35 and medical condition.

1 (2) The department of public health shall make available to
2 physicians, upon request, all of the following information:

3 (a) Geographically indexed materials designed to inform the
4 woman about public and private agencies and services available
5 to assist a woman through pregnancy, at the time of childbirth,
6 and while the child is dependent. The materials shall include
7 a comprehensive list of the agencies available, categorized by
8 the type of services offered, and a description of the manner
9 by which the agency may be contacted.

10 (b) Materials that encourage consideration of placement for
11 adoption. The materials shall inform the woman of the benefits
12 of adoption, including the requirements of confidentiality in
13 the adoption process, the importance of adoption to individuals
14 and society, and the state's interest in promoting adoption by
15 preferring adoption over abortion.

16 (c) Materials that contain objective information describing
17 the methods of abortion procedures commonly used, the medical
18 risks commonly associated with each such procedure, and the
19 possible detrimental physical and psychological effects of
20 abortion.

21 2. Compliance with the prerequisites of this section shall
22 not apply to any of the following:

23 a. An abortion performed to save the life of a pregnant
24 woman.

25 b. An abortion performed in a medical emergency.

26 c. The performance of a medical procedure by a physician
27 that in the physician's reasonable medical judgment is designed
28 to or intended to prevent the death or to preserve the life of
29 the pregnant woman.

30 3. A physician who violates this section is subject to
31 licensee discipline pursuant to section 148.6.

32 4. This section shall not be construed to impose civil
33 or criminal liability on a woman upon whom an abortion is
34 performed, or to prohibit the sale, use, prescription, or
35 administration of a measure, drug, or chemical designed for the

1 purposes of contraception.

2 5. The board of medicine shall adopt rules pursuant to
3 chapter 17A to administer this section.

4 6. As used in this section, "*unborn child*" means an
5 individual organism of the species homo sapiens from
6 fertilization to live birth.

7 DIVISION II

8 PROHIBITIONS ON ABORTION — TWENTY WEEKS POSTFERTILIZATION

9 Sec. 2. NEW SECTION. 146B.1 Definitions.

10 As used in this chapter, unless the context otherwise
11 requires:

12 1. "*Abortion*" means the termination of a human pregnancy
13 with the intent other than to produce a live birth or to remove
14 a dead fetus.

15 2. "*Attempt to perform an abortion*" means an act, or
16 an omission of a statutorily required act, that, under the
17 circumstances as the actor believes them to be, constitutes a
18 substantial step in a course of conduct planned to culminate in
19 the performing of an abortion.

20 3. "*Department*" means the department of public health.

21 4. "*Fertilization*" means the fusion of a human spermatozoon
22 with a human ovum.

23 5. "*Major bodily function*" includes but is not limited
24 to functions of the immune system, normal cell growth, and
25 digestive, bowel, bladder, neurological, brain, respiratory,
26 circulatory, endocrine, and reproductive functions.

27 6. "*Medical emergency*" means a situation in which an
28 abortion is performed to preserve the life of the pregnant
29 woman whose life is endangered by a physical disorder, physical
30 illness, or physical injury, including a life-endangering
31 physical condition caused by or arising from the pregnancy, or
32 when continuation of the pregnancy will create a serious risk
33 of substantial and irreversible impairment of a major bodily
34 function of the pregnant woman.

35 7. "*Medical facility*" means any public or private hospital,

1 clinic, center, medical school, medical training institution,
2 health care facility, physician's office, infirmary,
3 dispensary, ambulatory surgical center, or other institution or
4 location where medical care is provided to any person.

5 8. "*Perform*", "*performed*", or "*performing*", relative to an
6 abortion, means the use of any means, including medical or
7 surgical, to terminate the pregnancy of a woman known to be
8 pregnant with the intent other than to produce a live birth or
9 to remove a dead fetus.

10 9. "*Physician*" means a person licensed under chapter 148.

11 10. "*Postfertilization age*" means the age of the unborn
12 child as calculated from fertilization.

13 11. "*Probable postfertilization age*" means what, in
14 reasonable medical judgment, will with reasonable probability
15 be the postfertilization age of the unborn child at the time
16 the abortion is to be performed.

17 12. "*Reasonable medical judgment*" means a medical judgment
18 made by a reasonably prudent physician who is knowledgeable
19 about the case and the treatment possibilities with respect to
20 the medical conditions involved.

21 13. "*Unborn child*" means an individual organism of the
22 species homo sapiens from fertilization until live birth.

23 Sec. 3. NEW SECTION. 146B.2 Determination of
24 postfertilization age — abortion prohibited at twenty or
25 more weeks postfertilization age — exceptions — reporting
26 requirements — penalties.

27 1. Except in the case of a medical emergency, in addition
28 to compliance with the prerequisites of chapter 146A, an
29 abortion shall not be performed or be attempted to be performed
30 unless the physician performing the abortion has first made
31 a determination of the probable postfertilization age of the
32 unborn child or relied upon such a determination made by
33 another physician. In making such a determination, a physician
34 shall make such inquiries of the pregnant woman and perform or
35 cause to be performed such medical examinations and tests the

1 physician considers necessary in making a reasonable medical
2 judgment to accurately determine the postfertilization age of
3 the unborn child.

4 2. *a.* A physician shall not perform or attempt to perform
5 an abortion upon a pregnant woman when it has been determined,
6 by the physician performing the abortion or by another
7 physician upon whose determination that physician relies,
8 that the probable postfertilization age of the unborn child
9 is twenty or more weeks unless, in the physician's reasonable
10 medical judgment, any of the following applies:

11 (1) The pregnant woman has a condition which the physician
12 deems a medical emergency.

13 (2) The abortion is necessary to preserve the life of an
14 unborn child.

15 *b.* If an abortion is performed under this subsection, the
16 physician shall terminate the human pregnancy in the manner
17 which, in the physician's reasonable medical judgment, provides
18 the best opportunity for an unborn child to survive, unless, in
19 the physician's reasonable medical judgment, termination of the
20 human pregnancy in that manner would pose a greater risk than
21 any other available method of the death of the pregnant woman
22 or of the substantial and irreversible physical impairment of a
23 major bodily function. A greater risk shall not be deemed to
24 exist if it is based on a claim or diagnosis that the pregnant
25 woman will engage in conduct which would result in the pregnant
26 woman's death or in substantial and irreversible physical
27 impairment of a major bodily function.

28 3. A physician who performs or attempts to perform an
29 abortion shall report to the department, on a schedule and in
30 accordance with forms and rules adopted by the department, all
31 of the following:

32 *a.* If a determination of probable postfertilization age of
33 the unborn child was made, the probable postfertilization age
34 determined and the method and basis of the determination.

35 *b.* If a determination of probable postfertilization age of

1 the unborn child was not made, the basis of the determination
2 that a medical emergency existed.

3 *c.* If the probable postfertilization age of the unborn
4 child was determined to be twenty or more weeks, the basis of
5 the determination of a medical emergency, or the basis of the
6 determination that the abortion was necessary to preserve the
7 life of an unborn child.

8 *d.* The method used for the abortion and, in the case of
9 an abortion performed when the probable postfertilization age
10 was determined to be twenty or more weeks, whether the method
11 of abortion used was one that, in the physician's reasonable
12 medical judgment, provided the best opportunity for an unborn
13 child to survive or, if such a method was not used, the basis
14 of the determination that termination of the human pregnancy
15 in that manner would pose a greater risk than would any other
16 available method of the death of the pregnant woman or of the
17 substantial and irreversible physical impairment of a major
18 bodily function.

19 4. *a.* By June 30, annually, the department shall issue a
20 public report providing statistics for the previous calendar
21 year, compiled from the reports for that year submitted in
22 accordance with subsection 3. The department shall ensure that
23 none of the information included in the public reports could
24 reasonably lead to the identification of any woman upon whom an
25 abortion was performed.

26 *b.* (1) A physician who fails to submit a report by the end
27 of thirty days following the due date shall be subject to a
28 late fee of five hundred dollars for each additional thirty-day
29 period or portion of a thirty-day period the report is overdue.

30 (2) A physician required to report in accordance with
31 subsection 3 who has not submitted a report or who has
32 submitted only an incomplete report more than one year
33 following the due date, may, in an action brought in the
34 manner in which actions are brought to enforce chapter 148,
35 be directed by a court of competent jurisdiction to submit a

1 complete report within a time period stated by court order or
2 be subject to contempt of court.

3 (3) A physician who intentionally or recklessly falsifies
4 a report required under this section is subject to a civil
5 penalty of one hundred dollars.

6 5. Any medical facility in which a physician is authorized
7 to perform an abortion shall implement written medical
8 policies and procedures consistent with the requirements and
9 prohibitions of this chapter.

10 6. The department shall adopt rules to implement this
11 section.

12 Sec. 4. NEW SECTION. **146B.3 Civil actions and penalties.**

13 1. Failure of a physician to comply with any provision of
14 section 146B.2, with the exception of the late filing of a
15 report or failure to submit a complete report in compliance
16 with a court order, is grounds for licensee discipline under
17 chapter 148.

18 2. A woman upon whom an abortion has been performed in
19 violation of this chapter may maintain an action against the
20 physician who performed the abortion in intentional or reckless
21 violation of this chapter for actual damages.

22 3. A woman upon whom an abortion has been attempted in
23 violation of this chapter may maintain an action against the
24 physician who attempted the abortion in intentional or reckless
25 violation of this chapter for actual damages.

26 4. A cause of action for injunctive relief to prevent a
27 physician from performing abortions may be maintained against a
28 physician who has intentionally violated this chapter by the
29 woman upon whom the abortion was performed or attempted, by
30 a parent or guardian of the woman if the woman is less than
31 eighteen years of age at the time the abortion was performed
32 or attempted, by a current or former licensed health care
33 provider of the woman, by a county attorney with appropriate
34 jurisdiction, or by the attorney general.

35 5. If the plaintiff prevails in an action brought under

1 this section, the plaintiff shall be entitled to an award for
2 reasonable attorney fees.

3 6. If the defendant prevails in an action brought under
4 this section and the court finds that the plaintiff's suit was
5 frivolous and brought in bad faith, the defendant shall be
6 entitled to an award for reasonable attorney fees.

7 7. Damages and attorney fees shall not be assessed against
8 the woman upon whom an abortion was performed or attempted
9 except as provided in subsection 6.

10 8. In a civil proceeding or action brought under this
11 chapter, the court shall rule whether the anonymity of any
12 woman upon whom an abortion has been performed or attempted
13 shall be preserved from public disclosure if the woman does not
14 provide consent to such disclosure. The court, upon motion
15 or on its own motion, shall make such a ruling and, upon
16 determining that the woman's anonymity should be preserved,
17 shall issue orders to the parties, witnesses, and counsel
18 and shall direct the sealing of the record and exclusion of
19 individuals from courtrooms or hearing rooms to the extent
20 necessary to safeguard the woman's identity from public
21 disclosure. Each such order shall be accompanied by specific
22 written findings explaining why the anonymity of the woman
23 should be preserved from public disclosure, why the order is
24 essential to that end, how the order is narrowly tailored to
25 serve that interest, and why no reasonable less restrictive
26 alternative exists. In the absence of written consent of the
27 woman upon whom an abortion has been performed or attempted,
28 anyone, other than a public official, who brings an action
29 under this section shall do so under a pseudonym. This
30 subsection shall not be construed to conceal the identity
31 of the plaintiff or of witnesses from the defendant or from
32 attorneys for the defendant.

33 9. This chapter shall not be construed to impose civil
34 or criminal liability on a woman upon whom an abortion is
35 performed or attempted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

DIVISION III
LEGISLATIVE INTENT

Sec. 5. LEGISLATIVE INTENT. It is the intent of the general assembly to enact policies that protect all unborn life. However, this Act shall not be interpreted to create or recognize a right to an abortion or to prohibit abortion prior to an unborn child reaching a postfertilization age of twenty weeks.

DIVISION IV
SEVERABILITY — EFFECTIVE DATE

Sec. 6. SEVERABILITY CLAUSE. If any provision of this Act or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions of applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 7. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.>

2. Title page, by striking lines 1 and 2 and inserting <An Act relating to limitations on and prerequisites for an abortion, providing for licensee discipline, providing civil penalties, and including effective date provisions.>